

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

First Appeal No. 1063 of 2001

1. Sitab Singh S/o Bakhtawar Singh
2. Daleep Singh S/o Bakhtawar Singh
Both R/o Village Gwai,
Patwari Circle – Nandprayag,
Tehsil and District Chamoli.

..... Appellants/ Plaintiffs

Versus

1. State of Uttaranchal.
2. Forest Panchayat Officer /
S.D.M. Chamoli.
3. Forest Panchayat Inspector,
Chamoli.

..... Respondents / Defendants

Mr. Pankaj Purohit, Advocate for the appellants.

Mr. R.C. Arya, learned Standing Counsel for respondents.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 96 of the Code of Civil Procedure, 1908, is directed against the judgment and decree passed on 29.05.2001 in Civil Suit No. 55 of 1995, between the parties.

2) Brief facts of the case are that the plaintiffs / appellants are resident of village Gwai, Tehsil and District Chamoli. In their house they had no cow shed, as such in 1988, they started constructing a new house for which they needed the sleepers from the trees. There is one Van Panchayat in the village. Considering the need of the plaintiffs, the Sarpanch of the Van Panchayat Gwai, granted permission to cut three trees of pines from the Van Panchayat to the plaintiffs for constructing the house. In addition to that, the permission to cut one dry tree was also

given on 21.03.1989. From the first three trees, the plaintiffs got prepared 60 sleepers. Rest 32 sleepers were made from the fourth tree i.e. dry tree. Meanwhile, due to some enmity, a complaint was lodged to Patwari Nandprayag, who got registered a criminal case under Section 379, 206, 207 of the Indian Penal Code and under Section 4/7 of the Forest Act, and submitted the charge sheet against present appellants before the Chief Judicial Magistrate, Chamoli. The trial court decided the case on 18.12.1993 holding that plaintiffs have not committed any offence and they were acquitted of the charges framed against them. The Chief Judicial Magistrate further directed that 92 sleepers seized from the plaintiffs be handed over to Sarpanch of the Van Panchayat. When the plaintiffs filed Criminal Appeal No. 10 of 1993 before the Session Judge, claiming the possession of the sleepers, the same was dismissed with the direction that accused (present appellants) could institute a suit claiming title over the sleepers before the Civil court. Consequently, after giving notice under Section 80 of the Code of Civil Procedure, 1908, the plaint was presented on behalf of the plaintiffs in the Civil court, which was registered as Civil Suit No. 55 of 1995. The said suit was contested by the defendants / respondents. After recording the evidence and hearing the parties, learned trial court i.e. District Judge, Chamoli passed the impugned judgment and decree dated 29.09.2001, granting relief in respect of 32 sleepers in favour of the plaintiff Sitab Singh. However, in the judgment in question, learned District Judge refused to grant permission in rest of sleepers, as the plaint was not signed by other plaintiffs except Sitab Singh. Aggrieved by said judgment and decree, this appeal has been preferred by the plaintiffs / appellants.

- 3) Heard learned counsel for the parties.
- 4) Learned counsel for the plaintiffs / appellants drew my attention to the provisions of Order VI Rule 15 of the Code of Civil Procedure, 1908, which reads as under:
- “15. Verification of pleadings. – (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.***
- (2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verified of his own knowledge and what he verifies upon information received and believed to be true.***
- (3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.***
- (4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.”***

On the basis of aforesaid Rule, it is argued that signature by any one of the plaintiffs is sufficient in the plaint, as on behalf of rest of the plaintiffs it was signed by the counsel. It is further contended on behalf of the appellants that the relief could not have been denied to the petitioner merely on the ground that the other plaintiffs have not signed the plaint.

- 5) It is pertinent to mention here, that under Rule 14 of Order VI of the Code, every pleading is required to be signed by the party and his pleader, if any. Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue

or defend on his behalf. Reading aforementioned Rule 15 with Rule 14, makes it clear that technically the plaintiff's were required to sign the plain but verification could have been done by one of the plaintiffs. It is also evident from the record that there was no objection from the defendant as to non-signing of plaint by other plaintiffs. In the circumstances, this Court feels that if the defect was detected by learned trial court at the time of writing judgment, the irregularity could have been cured by permitting the other plaintiffs to sign the plaint. The principle of law laid down in *Bharat Singh Vs. Board of Revenue, reported in 1969 Allahabad Law Journal pg. 59* and the one held in *Bebi Asgari Vs. Mohd. Kasim, reported in A.I.R. 1951 PATNA 323*, it appears to be unjust and improper to refuse the relief to the plaintiffs on such technical ground that all the plaintiffs have not signed the plaint, without giving them opportunity of rectifying the mistake. Therefore, this Court feels it necessary, in the above circumstances, that the case should be remanded back to the trial court for fresh decision, after giving opportunity to the plaintiffs to sign the plaint, who have failed to sign it and decide rights also in accordance with law.

6) Accordingly, the appeal is allowed. The impugned judgment and order dated 29.05.2001 is set aside in respect of the part the suit is dismissed. The trial court in the light of above observation shall decide the suit No. 55 of 1995 afresh in respect of relief denied, in accordance with law. Costs easy. The lower court record be sent back.

(Prafulla C. Pant, J.)

Dt. 20th February, 2006.

H.Negi